IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2172 of 1986

Bank of Baroda,
a body Corporate constituted
under the Banking Companies
(Acquisition and Transfer of Undertaking
Act V, of 1970 and having their
Head Office at Mandvi, Baroda,
State of Gujrat and one of its
branch office known as Prabhadevi Branch
at S.K.Bole Road,
Near Siddhi Vinayak Temple,
Bombay 400 048 ..Plaintiff

versus

1. Arvind Metal Industries a
partnership firm having its
principal business at Plot
No.Cl-189, G.I.D.C.,
Ankleshwar, (Gujrat),
and office at 142-F,
Lalbawa Haveli, 1st floor,
Room No.36, Bhuleshwar,
Bombay 400 002.

2. C.B.Shukla, partner of
M/s.Arvind Metal Industries,
residing at 215, Panjarpole
Main Road, Bombay 400 004.

3. R.B.Shukla, partner of
M/s.Arvind Metal Industries,
residing at 215, Panjarpole
Main Road, Bombay 400 004.

4. M.B.Shukla, partner of
M/s.Arvind Metal Industries,
residing at 215, Panjarpole
Main Road, Bombay 400 004.

5. N.B.Mehta, partner of
M/s.Arvind Metal Industries,
residing at 215, Panjarpole
Main Road, Bombay 400 004.

6. A.B.Mehta, partner of
M/s.Arvind Metal Industries,
residing at 215, Panjarpole
Main Road, Bombay 400 004.

7. M/s. Navnit Stainless Steel
Corporation, situated at
191 Panjalpole Road,
Bombay, guarantor of
M/s. Arvind Metal Industries ..Defendants

Mr.N.K.Kamat for plaintiff

Mr.C.D.Patel i/b.Dadhicha & Co. for the defendants

Coram : S.R.Sathe, J.
Dated : 15th Dec., 2005

JUDGMENT

1. The plaintiff bank has filed this suit against the defendants for recovery of the amount of Rs.3,41,952.71 paise with future interest and cost of the suit.

2. Plaintiff's case in brief is that defendant No.1 is a partnership firm. The defendants 2 to 6 are the partners of the said firm. The defendant No.7 is also a partnership firm of which defendant Nos. 2 to 6 are the partners.

3. In October 1978, at the request of defendants 1 to 6, plaintiff bank sanction cash credit hypothecation facility to the extent of Rs.1,00,000/- in favour of the defendants and

defendants executed demand promissory note, agreement of hypothecation, letter of continuing security, and in pursuance of the said documents the plaintiff bank granted cash credit facility to the defendants 1 to 6. Then again another loan facility of Rs.1,75,000/- was granted and for that also defendants 1 to 6 executed necessary documents. In pursuance of the said documents, plaintiff bank granted cash credit hypothecation facility with a limit of Rs.3,00,000/-. The defendant No.7 and defendants Nos.2 to 6 as partner of defendant No.7 executed General Form of Guarantee dated 12.10.1981 and guarantee dated 12.10.1981 and guaranted the due payment and discharge on demand of all the amounts due and payable to plaintiff.

4. The defendant failed to clear the dues and it was noticed that on 29.3.1984 amount of Rs.3,57,858.86 was due from the defendants. Inspite of the repeated letters the defendants failed to repay the amount. Finally, the plaintiffs filed the present suit.

5. The defendants filed their written statement and opposed the suit claim. They have also contended that they had infact given proposal for

settlement of the entire suit on 29.1.1992 and it was agreed that the suit would be settled by defendants paying the amount of Rs.50,000/- by instalments. They further contended that pursuant to the said proposal they paid the sum of Rs.3,00,000/- (amount of cash credit facility). Thus, according to them now the defendants are not liable to pay any amount.

6. Without prejudice to the above contentions, the defendants also contended that the interest charged at the rate of 20% was exorbitant. They also contended that they had paid the amount of Rs.20,000/- in 1987-1988, but the bank did not give credit for the said amount. They also contended that their signatures were obtained on blank forms. The defendants further contended that plaintiffs had in fact agreed to waive the interest. Hence, on all these grounds the defendants contended that plaintiffs are not entitled to get the amount as claimed.

7. On these pleadings (Coram : S.U.Kamdar, J.) has framed the following issues. I have given my findings against the same.

Issues	Findings
1) Whether Plaintiffs prove that they are entitled to recover a sum of Rs.3,41,952.71 with further interest thereon @ 20% with quarterly rest from the date of filing of the suit till realisation, under Cash Credit Facility and Term Loan Facility, as stated in the Plaint?	Plaintiffs are entitled to recover Rs.2,50,407.36 and interest at the rate of 12% from 25.12.1985 till realisation
2)Does the defendants prove that the said suit was compromised for sum of Rs.3,00,000/- and they have paid the said compromise amount as stated in the written statement?	No
3) What relief and order?	As mentioned in final order

8. In order to prove the suit claim the plaintiff bank has examined Ms. Sandhya P. Yadwadkar, the Manager of the Plaintiff bank. She has stated that the defendants 1 to 6 had approached the plaintiff bank and cash credit facility was granted as mentioned in the plaint. She has also stated that defendants executed the necessary documents and accordingly payment was made to the defendants. The original demand promissory note, the original agreement of hypothecation, continuing security, partnership letter, hypothecation of movable machinery, letter of acknowledgement are produced and duly proved by them. The said documents are at Exhibit A to Exhibit F. The plaintiff has also produced the General Form of Guarantee dated 12.10.1981, the letter of Acknowledgement, D.b.Note dated 12.10.1981, original hypothecation of goods, advocate's notice, reply of the defendant's advocate and letter from the Advocate at Exhibit H to Exhibit M. Though plaintiff's witness is cross examined at length, nothing has been brought on record to show that the defendants had not received the payment as agreed or that their signatures were obtained on blank forms. Had it been the fact that without getting money they had signed then certainly defendants would have made

complaint to that effect when plaintiff was repeatedly asking the defendants to make the repayment, but, we find that the defendants kept mum and did not raise any dispute in that behalf. Not only that, but what is more to be noted is that though the defendants have taken the contention that their signatures were obtained on blank forms, they have not even stepped into the witness box to state so, and have not offered themselves for cross examination. The defendants have therefore miserably failed to prove their contentions.

9. Though an attempt has been made to show that the plaintiff has charged exorbitant interest, we find that the interest is charged as per the terms and conditions mentioned in the above referred documents. So, under such circumstances, there is no substance in the contention raised by the defendants. The plaintiff's witness has even admitted that they received one draft of Rs.20,000/- from the defendants, but the plaintiff bank did not encash the same, no reason for not encashing the said draft is given. Besides this, though the plaintiff has claimed the amount of Rs.3,57,858.06 in the plaint, if we see the statement of account of the defendants which is produced at Exhibit G, it

appears that by the end of 24.12.1985 the amount of Rs.2,70,407.36p was only due from the defendants. If subsequent interest would have been calculated by the plaintiffs then it ought to have reflected in the said statement of account. No details about the said calculation of interest are given by the plaintiff. So, after taking into consideration the draft of Rs.20,000/- given by the defendants it can be said that the plaintiffs have proved that they are entitled to recover the amount of Rs.2,50,407.36p together with interest at the rate of 12% per annum on the said amount from 25.12.1985. Hence, I pass the following order.

ORDER

1. The defendants 1 to 7 to pay the plaintiff bank Rs.2,50,407.36 paise and interest on the said amount at the rate of 12% per annum from 25.12.1985 till realisation of the amount.

2. The defendants 1 to 7 to pay plaintiff bank the cost of this suit and bear their own.

(S.R.Sathe, J.)

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Bank of Baroda ..Plaintiff

versus

Arvind Metal Industries
& Others ..Defendant.

Coram : S.R.Sathe, J.
Dated : 15th Dec., 2005

Final Order.

1. The defendants 1 to 7 to pay the plaintiff bank Rs.2,50,407.36 paise and interest on the said amount at the rate of 12% per anum from 25.12.1985 till realisation of the amount.

2. The defendants 1 to 7 to pay plaintiff bank the cost of this suit and bear their own.

(S.R.Sathe, J.)